

<b>STATE OF SOUTH CAROLINA</b>	)	<b>BEFORE THE CHIEF PROCUREMENT OFFICER</b>
<b>COUNTY OF RICHLAND</b>	)	
	)	
In the Matter of Protest of:	)	DECISION
	)	
Janitorial Contracting Service	)	CASE NO. 2007-129
	)	
Materials Management Office	)	POSTING DATE:
IFB No. 08-S7558	)	
Janitorial Services for	)	NOVEMBER 26, 2007
<u>Florence-Darlington Technical College</u>	)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Janitorial Contracting Service (JCS). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure janitorial services for Florence-Darlington Technical College (FDTC), including Item No. 1 - Main Campus, Item No. 2 - Health Science Campus, and Item No. 3 - Child Development Center. JCS submitted a bid for Item No. 2, the Health Science Campus. MMO rejected JCS's bid determining JCS to be a non-responsible bidder. In the letter, JCS protested MMO's rejection of the bid as a non-responsible bidder alleging that it possesses the equipment, experience, financial backing and the skilled and non-skilled workforce needed to perform all duties. JCS also alleged that JCS "has been penalized for the work history of another company and are able to supply references exclusive to Janitorial Contracting Services."

In order to resolve the matter, the CPO conducted a hearing November 14, 2007. Appearing before the CPO were JCS, represented by Kevin George; FDTC, represented by Lorena McLeod, Procurement Director; and MMO, represented by John Stevens, State Procurement Officer.

### **NATURE OF PROTEST**

The letter of protest is attached and incorporated herein by reference.

## **FINDINGS OF FACT**

The following dates are relevant to the protest:

1. On July 30, 2007, MMO issued the IFB. [Ex. 1]
2. On August 13, 2007, MMO issued Amendment No. 1. [Ex. 2]
3. On August 28, 2007, MMO opened the bids received. [See Ex. 4 for the bid tabulation]
4. On September 26, 2007, MMO emailed Kevin George its determination of nonresponsibility of JCS. [Ex. 6]
5. On September 28, 2007, John Stevens mailed the reference check forms to Kevin George. [Ex. 7]
6. On October 5, 2007, the CPO received JCS's protest.

## **CONCLUSIONS OF LAW**

The Consolidated Procurement Code (Code) requires that an IFB be awarded to "to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." [11-35-1520(10)] The Code reads further, "Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts." [11-35-1810(1)] In this case, the solicitation required all bidders to submit business references: "**Contractor must provide at least (4) four references to Florence-Darlington Technical College prior to awarding of this contract – NO EXCEPTIONS.**" [Emphasis per the original]

JCS complied with that requirement providing five references in its bid. When Richard Brinkley, MMO Procurement Manager, contacted the references provided by JCS, he learned that three of the five references provided by JCS - Perdue Farms, Darlington Water & Sewer, and Noland & Company - had actually contracted with George and Son's Janitorial Service, Kevin George's father's business, not JCS. Two

of the three references contacted by Mr. Brinkley<sup>1</sup> reported George & Sons' performance was "below average" and "poor." The third, Noland, reported George & Sons' performance was "satisfactory."

FDTC had also contracted with George and Sons and reported to Mr. Brinkley that George and Sons' performance was "unsatisfactory" and that "they [their contract] were terminated."

Based upon the information received, and after reporting the reference responses to Kevin George of JCS, Mr. Brinkley determined JCS not responsible. Regarding a determination by the State that a bidder is non-responsible, the Code requires "A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the board." [11-35-1810(2)] Mr. Brinkley prepared a determination of nonresponsibility regarding JCS, which reads, "Of the four references given, 3 were less than satisfactory in the performance of prior duties; 1 was satisfactory and one reference had closed up business in Florence with no reference given."

In its protest letter, JCS alleged "Janitorial Contracting Services has been penalized for the work history of another company and are able to supply references exclusive to Janitorial Contracting Service." In this case, JCS's association with George & Sons may have contributed to the determination of nonresponsibility. However, JCS provided the references, and in at least two cases, the references involved "joint ventures" between JCS and George & Sons.

Mr. Brinkley did the only thing he could do; he contacted the references provided by JCS. Since the references provided involved joint ventures between George & Sons and JCS, JCS was rightfully held accountable for George & Sons' and its performance.

Further, according to the reference provided by Darlington Water and Sewer Authority, their contract had actually been with George & Sons, not JCS. The three references actually contacted by Mr. Brinkley, Perdue Farms, Darlington Water & Sewer, and Noland, reported all three contracts were with George & Sons, not JCS. In his determination, Mr. Brinkley wrote further, "Satisfactory references of prior work completed

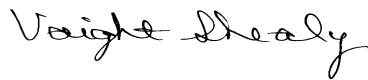
---

<sup>1</sup> One of the references provided by JCS, Merita Bakeries, was no longer in business. Another, A & L Auto Sales, was so small that, in Mr. Brinkley's opinion, it did not merit contacting.

was a factor in the determination of vendor's ability to perform the proposed contract solicitation in a satisfactory manner. References given in this solicitation for this contractor were either less than satisfactory or incorrectly given." [Ex. 6] The "incorrectly given" statement may be most compelling because JCS had never actually contracted directly with two of the five references it provided with its bid.

### **DETERMINATION**

Under the Code, a determination of non-responsibility is final and conclusive unless shown to be clearly erroneous, arbitrary, capricious, or contrary to law. [11-35-2410(A)] No such showing has occurred here. The protest is denied.



---

R. Voight Shealy  
Chief Procurement Officer  
for Supplies and Services

---

November 26, 2007

Date

Columbia, S.C.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

-----  
Additional information regarding the protest process is available on the internet at the following web site:  
[www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at [www.state.sc.us/mmo/legal/paneldec.htm](http://www.state.sc.us/mmo/legal/paneldec.htm)